APPENDIX

Revenue Act of 1918, c. 18, 40 Stat. 1057:

SEC. 202. (a) That for the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition of property, real, personal, or mixed, the basis shall be—

(1) In the case of property acquired before March 1, 1913, the fair market price or value of such property as of that date; and

(2) In the case of property acquired on or after that date, the cost thereof; or the inventory value, if the inventory is made in accordance with section 203.

(b) When property is exchanged for other property, the property received in exchange shall for the purpose of determining gain or loss be treated as the equivalent of cash to the amount of its fair market value, if any; * * *

SEC. 213. That for the purposes of this title (except as otherwise provided in section 233) the term "gross income"—

(a) Includes gains, profits, and income derived from salaries, wages, or compensation for personal service * * * of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit,

or gains or profits and income derived from any source whatever. The amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under subdivision (b) of section 212, any such amounts are to be properly accounted for as of a different period; but

(b) Does not include the following items, which shall be exempt from taxation under this title:

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(3) The value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included in gross income);

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Revenue Act of 1928, c. 852, 45 Stat. 791:

SEC. 111. DETERMINATION OF AMOUNT OF GAIN OR LOSS.

(a) *Computation of gain or loss.*—Except as hereinafter provided in this section, the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the basis provided in section 113, and the loss shall be the excess of such basis over the amount realized.

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(d) *Recognition of gain or loss.*—In the case of a sale or exchange, the extent to which the gain or loss determined under this section shall be recognized for the purposes of this title, shall be determined under the provisions of section 112.

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SEC. 112. RECOGNITION OF GAIN OR LOSS.

(a) *General rule.*—Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 111, shall be recognized, except as hereinafter provided in this section.

(b) *Exchanges solely in kind.*—

(1) *Property held for productive use or investment.*—No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment.

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SEC. 113. BASIS FOR DETERMINING GAIN OR LOSS.

(a) *Property acquired after February 28, 1913.*—The basis for determining the gain or loss from the sale or other disposition of property acquired after February 28, 1913, shall be the cost of such property; except that—

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(4) *Gift or Transfer in Trust before January 1, 1921.*—If the property was acquired by gift or transfer in trust on or before December 31, 1920, the basis shall be the fair market value of such property at the time of such acquisition. The provisions of this paragraph shall apply to the acquisition of such property interests as are specified in section 402 (e) of the Revenue Act of 1921, or in section 302 (f) of the Revenue Act of

1924 or the Revenue Act of 1926 (relating to property passing under power of appointment) regardless of the time of acquisition;

* * * * *

(b) *Property acquired before March 1, 1913.*—The basis for determining the gain or loss from the sale or other disposition of property acquired before March 1, 1913, shall be:

(1) the cost of such property (or, in the case of such property as is described in subsection (a) (1), (4), (5), or (12) of this section, the basis as therein provided), or

(2) the fair market value of such property as of March 1, 1913,

whichever is greater. In determining the fair market value of stock in a corporation as of March 1, 1913, due regard shall be given to the fair market value of the assets of the corporation as of that date.

Treasury Regulations 74, promulgated under the Revenue Act of 1928:

ART. 561. *Determination of the amount of gain or loss.*—Section 111 sets forth the rules for the determination of the amount of gain or loss from the sale or other disposition of property. In general, the gain from the sale or other disposition of property is the excess of the amount realized therefrom over the cost or other basis provided in section 113 and articles 591–604, and the loss is the excess of such cost or other basis over the amount realized. Whether gain or loss from a sale or exchange shall be recognized, and if so, the extent to which it is to be recognized for the purpose of income taxation, must be determined under the provisions of section 112 and articles 571–580.

The amount realized from the sale or other disposition of property is the sum of any money received plus the fair market value of the property (other than money) received. The fair market value of property is a question of fact, but only in rare and extraordinary cases does property have no fair market value. In computing the amount of gain or loss, however, the cost or other basis of the property shall be properly adjusted for any expenditure, receipt, loss, or other item properly chargeable to capital account, including the cost of improvements and betterments made to the property since the basic rate and carrying charges, such as taxes on unproductive property. Where the taxpayer has elected to deduct carrying charges in computing net income, or used such charges in determining his liability for filing returns of income for prior years, the cost or other basis may not be increased by such items in computing the gain or loss from the subsequent sale of the property. The cost or other basis of the property must also be decreased by the amount of the deductions for exhaustion, wear and tear, obsolescence, amortization, and depletion which have since the acquisition of the property been allowable in respect of such property, whether or not such deductions were claimed by the taxpayer or formally allowed. Adjustment to the cost or other basis on account of such allowable deductions as distinguished from the deductions actually taken in prior years, will be made only upon the basis of explicit and convincing evidence (and calculations based upon a theoretical formula are not such evidence) that the deductions taken were insufficient or excessive, as the case may be, due regard

being given to the expenditures made by the taxpayer to maintain the effective usefulness of the property. In no case shall the amount of the diminution in respect of depletion exceed a depletion deduction computed without reference to discovery value in the case of mines, or without reference to the allowance for depletion provided by section 114 (b) (3) in the case of oil and gas wells. See articles 241 and 611.) In addition, if the property was acquired before March 1, 1913, the basis (if other than the fair market value as of March 1, 1913) must be diminished by the amount of exhaustion, wear and tear, obsolescence, and depletion actually sustained before that date. In the case of stock the basis must be diminished by the amount of distributions previously made in respect to such stock, to the extent provided under the law applicable to the year in which the distribution was made.

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U. S. GOVERNMENT PRINTING OFFICE: 1941